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The Honorable Timothy A. Bradshaw
Hearing date: October 15, 2018

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FILED
KING COUNTY WASHINGTON

OCT 16 2018

SUPERIOR COURT CLERK
BY Victor Bigornia
DEPUTY

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JAMES EGAN, individually,

NO. 18-2-14942-8 SEA
(Consolidated)

11 Plaintiff,

12 v.

13 CITY OF SEATTLE, a Washington municipal
14 corporation,

15 **ORDER ON CITY OF SEATTLE'S
MOTION FOR PROTECTIVE
ORDER AND APPOINTMENT OF
SPECIAL MASTER**

16 Defendant.

17 ARTHUR WEST,

18 Plaintiff,

19 v.

20 SEATTLE CITY COUNCIL, CITY OF
21 SEATTLE, LISA HERBOLD, BRUCE
22 HARRELL, KSHAMA SAWANT, ROB
23 JOHNSON, DEBORA JUAREZ, MIKE
O'BRIEN, SALLY BAGSHAW, TERESA
MOSQUEDA, LORENA GONZALEZ,

24 Defendants.

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ORDER ON CITY OF SEATTLE'S MOTION FOR PROTECTIVE
ORDER AND APPOINTMENT OF SPECIAL MASTER - 1

Peter S. Holmes
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

1 THIS MATTER came before the Court on Defendant City of Seattle's Motion for
2 Protective Order and Appointment of Special Master, and the Court having considered:

3 (a) The City's Motion,
4 (b) Plaintiff James Egan's Opposition,
5 (c) The City's Reply, and
6 (d) Plaintiff Arthur West's Reply in Opposition to the City's Motion;

7 and being familiar with the files and pleadings in this matter, and having heard oral argument
8 from counsel on October 15, 2018, is fully advised.

9 **NOW, THEREFORE**, the Court rules as follows:

10 1. The Plaintiffs in this consolidated matter seek discovery the following information
11 as previously Ordered (dated September 14, 2018) produced by this Court:

12
13 **REQUEST FOR PRODUCTION NO. 1:** Please produce any and all
14 documentation for every communication identified in response to these
15 interrogatories related to the repeal of the ordinance commonly known as the
16 "head tax" including all emails, written communications, draft public
17 statements, related cell phone records, internal correspondence, and any form
18 of communication whatsoever.

19
20 **REQUEST FOR PRODUCTION NO. 2:** Please produce any and all forms
21 of communication, including emails and cell phone logs, related to Sally
22 Bagshaw's communications with anyone employed by a government agency
23 related to any potential recall vote as against former Mayor Ed Murray.

24
25 Additionally:

26
27 (1) in response to Mr. Egan's Request for Production No. 1, the City of Seattle
28 *shall* include and produce all responsive materials including those in the
29 possession and/control of Mayor Jenny Durkan and any and all of her
30 deputies;

31
32 (2) in response to Mr. Egan's Request for Production No. 2, the City of Seattle
33 *shall* include and produce all related documents that Sally Bagshaw
34 referenced as "circulating" that have not yet been produced.

1 2. The City of Seattle shall produce and divulge any and all responsive documents
2 currently in the “possession, custody, or control” of the Seattle City Attorney’s
3 Office including those records referenced by counsel during oral argument at the
4 hearing that occurred on October 15, 2018, by October 19, 2018.

5 3. Additionally, to the extent *not* previously accomplished, the City Attorney’s Office
6 is directed to respectfully request that each current City Councilmember, Mayor
7 Jenny Durkan, and anyone under their employment search their personal files,
8 devices, and accounts for records that:

9 a. are related in any way to the repeal or proposed repeal of the EHT
10 ordinance, also known as the “head tax”, specifically including records
11 relating to employee political activity potentially relevant to the “head tax”
12 and that

13 b. were generated on or after June 5, 2018;

14 c. the resulting searches and production are to be conducted in good-faith with
15 ambiguities to be resolved in favor of disclosure.

16 4. The City employees who are subject to this order are responsible for searching their
17 files, devices, and accounts for responsive records, and then must produce any
18 responsive records (e-mails, text messages, and any other type of data), to the City.
19 *Cf. Nissen v. Pierce County*, 183 Wn.2d 863, 886 (2015). The employees must also
20 submit an affidavit attesting to facts sufficient to show that all responsive records
21 have been produced. *Id.* The affidavits of each City Councilmember and of Mayor
22 Jenny Durkan shall state which of their employees has conducted the search
23 required by paragraph 2, and if any of their employees were not asked to search,
24 shall state why.

25 5. The City may review the material provided by its employees prior to production. If
26 the City elects to withhold any material as privileged or to claim that it is non-
27 responsive, the City shall produce a log of any withheld material including

1 information sufficient to determine whether the withheld material is indeed
2 privileged or non-responsive.

3 6. The City shall comply with paragraphs 3-5 of this Order on or before October 31,
4 2018.

5 7. The Court declines at this time to appoint a special master as doing so could
6 compromise transparency.

7 8. In addition to the above, the court incorporates by reference its oral findings and
8 conclusions.

9
10 **IT IS SO ORDERED.**

11 DATED this 16th day of October, 2018.

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13 Hon. Timothy A. Bradshaw
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